

ORIGINAL

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CLARISSA COCKER

(b) County of Residence of First Listed Plaintiff DALLAS
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Risk Management Alternatives, Inc.
and Glen Gephardt

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jerry J. Jarzombek
714 W. Magnolia
Fort Worth, TX 76104(817)
348-8325

Attorneys (If Known)

3:04 CV - 155.0.H

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|----------------------------|---|----------------------------|
| PTF | DEF | PTF | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of This State | | Incorporated or Principal Place of Business In This State | |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen of Another State | | Incorporated and Principal Place of Business In Another State | |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| Citizen or Subject of a Foreign Country | | Foreign Nation | |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input checked="" type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 370 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 371 IRS—Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify) _____
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

FDCPA (15 USC § 1692 et seq.)
 TDCA (Tex. Fin. Code 3392) unlawful debt collection

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 1,000.00 + CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) (See instructions):

IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE

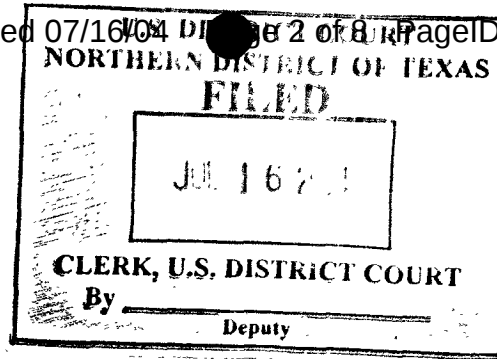
SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ORIGINAL

Jerry J. Jarzombek
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Fort Worth, Texas 76104
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CLARISSA COKER,

Plaintiff,

vs.

NCO FINANCIAL SYSTEMS, INC.,
and GLENN GEBHARDT,

Defendants.

Civil Action No.

COMPLAINT

and

DEMAND FOR JURY TRIAL

(Unlawful Debt Collection Practices)

Preliminary Statement

1. Plaintiff, Clarissa Coker, brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), as well as under the Texas Debt Collection Act, Tex. Finance Code § 392.001, et seq. ("TDCA") to obtain statutory damages, actual damages, injunctive relief, declaratory relief, and other relief for the Defendants' violations of the FDCPA and the TDCA.

2. Defendants, NCO Financial Systems, Inc. ("NCO") and Mr. Gebhardt ("Gebhardt") attempted to collect a consumer debt ("Debt") allegedly owed by Plaintiff arising from a purported

obligation to American Express (AmEx). The obligation ("Debt") required Plaintiff to pay money arising out of transactions in which money, property, insurance, or services were the subject thereof and the same were primarily for personal, family, or household purposes.

Jurisdiction and Venue

3. Jurisdiction of this Court attains pursuant to 15 U.S.C. § 1692k(d), 28 U.S.C. §§ 1331 and 1337(a), and the doctrine of pendent jurisdiction for the TDCA claims pursuant to 28 U.S.C. § 1367.

4. Venue in the Northern District of Texas is proper under 28 U.S.C. § 1391(b)-(c) and because the acts and transactions occurred here and the Defendants transact business here.

Parties

5. Plaintiff is a citizen of the State of Texas. Plaintiff is a "consumer" as defined by 15 U.S.C. § 1692a(3) and Tex. Finance Code § 392.001(1).

6. NCO is a corporation engaged in the business of collecting consumer debts in the Northern District of Texas. The principal purpose of NCO's business is the collection of consumer debts using the mails and telephone, and it regularly attempts to collect consumer debts for others. NCO is a "debt collector" as defined by 15 U.S.C. § 1692a(6) and Tex. Finance Code § 392.001(6). NCO is also a "third-party debt collector" as defined by Tex. Finance Code § 392.001(7).

7. Gebhardt is an individual engaged in the business of collecting consumer debts in the Northern District of Texas. The principal purpose of Gebhardt's business is the collection of consumer debts using the mails and telephone, and Gebhardt regularly attempts to collect consumer debts for others. Gebhardt is a "debt collector" as defined by 15 U.S.C. § 1692a(6) and Tex. Finance Code

§ 392.001(6). Gebhardt is also a "third-party debt collector" as defined by Tex. Finance Code § 392.001(7). Gebhardt is employed by NCO as a Collector.

Factual Allegations

8. In April 2004, Plaintiff had a telephone conversation with Gebhardt at NCO. During the communication, Gebhardt made several representations, including the following:

- a. that, as a result of the Debt, AmEx could put a lien on Plaintiff's home;
- b. that "once this goes to litigation" NCO "will put a civil judgment on your credit report;
- c. that he was not trying to scare Plaintiff, but was being honest with her;
- d. AmEx would make Plaintiff pay for their "attorney and court fees" and that Plaintiff's debt was \$6,500, but she would "be looking at well over \$10,000 when this whole thing is said and done;"
- e. Accepting Gebhardt's settlement offer of \$4,200 would "repair your credit" and change the R-9 rating on this account to an R-2;
- f. that if AmEx were to place a lien on Plaintiff's car, she could not sell it until the lien was paid off.

9. The foregoing acts and omissions were undertaken on behalf of the Defendants by their respective officers, agents, or employees acting at all times relevant hereto within the scope of that relationship.

10. The foregoing acts and omissions of the Defendants were undertaken by each of them willfully, intentionally, knowingly, and/or in gross disregard of the rights of the Plaintiff.

11. The foregoing acts and omissions of the Defendants were undertaken by each of them indiscriminately and persistently, as part of their regular and routine collection efforts, and without regard to or consideration of the identity or rights of the Plaintiff.

First Claim for Relief

12. The Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs. The Defendants' violations of the FDCPA include, but are not limited to the following:

- a. In violation of 15 U.S.C. § 1692d, the Defendants engaged in conduct the natural consequence of which was to harass, oppress, or abuse a person in connection with the collection of a debt, which conduct included:
 - i. Falsely representing that a lien could be filed on Plaintiff's home, which is exempt property in Texas.
 - ii. Falsely representing that a lien could be place on Plaintiff's car, which is exempt property in Texas.
 - iii. Falsely representing that NCO could put a "civil judgment" on Plaintiff's credit report.
 - iv. Falsely representing that Gebhardt was being honest.
 - v. Falsely representing that Plaintiff's debt would be increased by more than \$3,500, when Gebhardt is neither licensed to practice law nor qualified to give opinions on attorney's fees and court costs.
 - vi. Falsely representing that a settlement with NCO would repair Plaintiff's credit.
 - vii. Discussing credit repair, when neither NCO nor Gebhardt is a Credit Repair Orgainzation.
- b. In violation of 15 U.S.C. § 1692e, 15 U.S.C. § 1692e (2)(a), 15 U.S.C. § 1692e(10), and the "least sophisticated consumer standard," the Defendants used objectively false representations and/or false, deceptive, or misleading representations or means in connection with the collection of a consumer debt.
- c. In violation of 15 U.S.C. 1692e(5) and the "least sophisticated consumer standard," the Defendants threatened to take an action which cannot legally be taken or that is not intended to be taken.

- d. In violation of 15 U.S.C. § 1692f, the Defendants used unfair or unconscionable means to collect or attempt to collect a consumer debt which means included:
 - i. Falsely representing that a lien could be filed on Plaintiff's home, which is exempt property in Texas.
 - ii. Falsely representing that a lien could be place on Plaintiff's car, which is exempt property in Texas.
 - iii. Falsely representing that NCO could put a "civil judgment" on Plaintiff's credit report.
 - iv. Falsely representing that Gebhardt was being honest.
 - v. Falsely representing that Plaintiff's debt would be increased by more than \$3,500, when Gebhardt is neither licensed to practice law nor qualified to give opinions on attorney's fees and court costs.
 - vi. Falsely representing that a settlement with NCO would repair Plaintiff's credit.
 - vii. Discussing credit repair, when neither NCO nor Gebhardt is a Credit Repair Orgainzation.

Second Claim for Relief

13. The Plaintiff repeats, realleges, and incorporates by reference the foregoing paragraphs. The Defendants violations of the TDCA include, but are not limited to the following:

- a. In violation of Tex. Fin. Code § 392.301(a)(8), the Defendants threatened to take (and/or did take) an action prohibited by law.
- b. In violation of Tex. Fin. Code § 392.304(a)(8), the Defendants misrepresented the character of a consumer debt.
- c. In violation of Tex. Fin. Code § 392.304(a)(14), the Defendants misrepresented the status or nature of the services rendered by the debt collector or the debt collector's business.

- d. In violation of Tex. Fin. Code § 392.304(a)(19), the Defendants used false representations or deceptive means to collect a debt or obtain information concerning a consumer.

14. Under Tex. Fin. Code Ann. § 392.403, the Defendants' violations of the TDCA render them jointly and severally liable to Plaintiff for statutory damages, actual damages, injunctive relief, declaratory relief, costs, and reasonable attorney's fees.

Prayer for Relief

WHEREFORE, the Plaintiff prays that this Court:

1. Declare that Defendants' actions violate the FDCPA and the TDCA.
2. Enjoin the Defendants' actions which violate the TDCA.
3. Enter judgment in favor of Plaintiff and against Defendants for statutory damages, actual damages, costs, and reasonable attorneys' fees as provided by 15 U.S.C. § 1692k(a) and/or Tex. Fin. Code Ann. § 392.403
4. Grant such further relief as deemed just.

Dated: July 13, 2004.

Respectfully submitted,



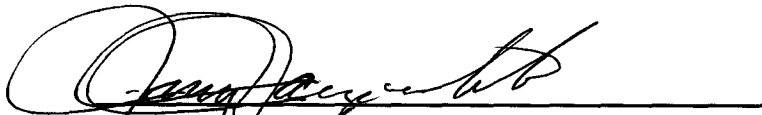
Jerry J. Jarzombek
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714 W. Magnolia Avenue
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DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury in this action.

Dated: July 13, 2004.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Jerry J. Jarzombek", is written over a horizontal line.

Jerry J. Jarzombek
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Fort Worth, Texas 76104
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Fax: 817-348-8328

ATTORNEY FOR PLAINTIFF